

BEFORE THE  
POSTAL REGULATORY COMMISSION  
WASHINGTON, D.C. 20268-0001

COMPLAINT OF THE GREETING CARD  
ASSOCIATION

Docket No. C2020-2

**UNITED STATES POSTAL SERVICE'S MOTION TO DISMISS WITH PREJUDICE  
THE GREETING CARD ASSOCIATION COMPLAINT**

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## TABLE OF CONTENTS

FACTUAL BACKGROUND .....	1
ARUGMENT.....	5
I. THE COMPLAINT FAILS TO STATE A CLAIM OF ANY VIOLATION OF APPLICABLE STATUTORY STANDARDS AND REGULATORY REQUIREMENTS THAT CAN FORM THE BASIS OF A COMPLAINT BECAUSE NONE APPLY.....	5
II. GCA'S COMPLAINT DOES NOT STATE A CLAIM UNDER SECTION 403(c).....	6
A. GCA's Discrimination Claim Fails Because GCA Does Not Allege That The Mailers Are Similarly Situated .....	7
B. GCA's Allegations Do Not Support The Inference That The Rate Differential Is Unreasonable.....	9
1. Commission Has Found That The Postal Service Has A Reasonable Justification For The Rate Differential Between Metered Letters and Stamped Letters.....	9
2. Allegations Of Charging Different Rates To Different Groups Of Mailers That Are Not Cost Justified Cannot Save GCA's Complaint .....	11
3. Factual Allegations Relating To Meter Volumes Are Inconclusive About Whether The Metered Letter Rate Met Its Declared Purpose .....	11
4. Complaint Fails To Establish That The Differential Does Not Conform With Section 3622 Factors And Objectives .....	13
III. THE COMPLAINT FAILS TO ESTABLISH THAT THE METERED LETTER RATE AND PRESORT RATES ARE ARBITRARY.....	16
IV. THE PRC HAS ALREADY COMPREHENSIVELY REVIEWED AND ADDRESSED GCA'S CLAIMS ON MULTIPLE OCCASIONS.....	17
V. DISMISSAL WITH PREJUDICE IS PROPER.....	17
CONCLUSION .....	18

The United States Postal Service (“Postal Service”), moves, pursuant to 39 C.F.R. § 3030.12(b), to dismiss the Complaint (“Complaint” or “Compl.”) filed by the Greeting Card Association (“GCA”). GCA’s Complaint is unique among the various complaints that have come before the Postal Regulatory Commission (“PRC” or “Commission”) in that it raises essentially no issues of fact. Rather, it attempts to relitigate questions of law that the Commission has already settled in multiple rate cases and annual compliance reviews. Without alleging any new facts that would justify reconsideration, the Complaint offers no basis for disturbing consistent Commission precedent.

### **FACTUAL BACKGROUND**

Until 2014, the Postal Service assessed the same rate to households and businesses for Single-Piece First-Class Mail. The Postal Regulatory Commission (“PRC” or “Commission”) first introduced the concept of a separate rate for Single-Piece Metered Letters in Docket RM2010-13. There, the Commission evaluated different benchmarks for calculating costs avoided by Presort First-Class Mail and decided that Single-Piece Metered Letters was the appropriate benchmark. In reaching this determination, the Commission analyzed whether a separate rate for Single-Piece Metered Letters was appropriate and found that “there does not appear to be any obvious legal barrier to the Postal Service exercising its pricing flexibility by setting the rate for the metered mail Base Group at a different level than the remainder of single-piece First Class letters.” Docket No. RM2010-13, Order No. 1320, Order Resolving Technical Issues Concerning the Calculation of Workshare Discounts, Apr. 20, 2012, at 11 n. 22. The Postal Service agreed and subsequently requested

favorable review of a separate rate for Single-Piece Metered Letters in Docket R2013-10. Docket No. R2013-10, USPS Notice of Market-Dominant Price Adjustment, Sept. 26, 2013, at 19 (hereinafter “R2013-10 Notice”). There, the Postal Service stated that a separate Metered Letter rate that is one cent below the rate for Stamped Letters is an appropriate exercise of its pricing flexibility. *Id.* The Postal Service further noted that the lower Metered Letter rate is likely to encourage the adoption of metered mail by small businesses. *Id.* at 19-20. The Commission favorably reviewed the Postal Service’s Notice establishing the new rate category. Docket No. R2013-10, Order No. 1890, Order On Price Adjustments For Market Dominant Products and Related Mail Classification Changes, Nov. 21, 2013, at 50 (finding the Notice met the requirements of 39 C.F.R. Subpart B).

Following the implementation of the separate Metered Letter rate, GCA first raised its objections in the FY2013 ACR docket. See Docket No. ACR2013, Initial Comments of the Greeting Card Association, Jan. 31, 2014. There, GCA recommended that the Commission request information from the Postal Service that would establish a justification for a rate that GCA otherwise believes is “an unjust and unreasonable rate change (in violation of 39 U.S.C. sec. 3622(b)(8)) . . . .” *Id.* at 1. To achieve that aim, GCA requested that the Postal Service provide information relating to whether the differential was successful in eliciting new meter usage or increasing the volume of Metered Letters, and information establishing the “cost savings from converting a letter from Stamped to Metered postage payment.” *Id.* at 1-2. The Commission declined to implement GCA’s recommendation. Docket No. ACR2013, Annual Compliance Determination, Mar. 27, 2014, at 71 (hereinafter “FY2013 ACD”).

The Commission concluded, “information regarding the cost differential between Stamped and Metered Letters is not likely to aid the Commission in determining whether the rates and fees comply with the provisions of chapter 36, United States Code” because the Commission had not determined that a worksharing relationship exists between Stamped and Metered Letters. *Id.*

In the FY2014 ACR docket, GCA renewed its concerns and filed a comment stating that the rate differential between Stamped and Metered Letters may not conform with 39 U.S.C. §§ 3622(b)(1), 3622(b)(5), and 3622(b)(8). GCA’s rationale was that a separate rate for Single-Piece Metered Letters constitutes discrimination against Stamped Letter mailers. Docket No. ACR2014, Initial Comments of the Greeting Card Association, Feb. 2, 2015, at 4-5. Likewise, the American Postal Workers Union (“APWU”) contended that the differential is inconsistent with 39 U.S.C. § 3622(b)(8) and further suggested that the differential violates the 39 U.S.C. § 403(c) nondiscrimination principle. Docket No. ACR2014, Initial Comments of American Postal Workers Union, AFL-CIO, Feb. 2, 2015, at 2, 8-9. The Commission disagreed with GCA and APWU. The Commission found that the lower Metered Letter rate does not unduly or unreasonably discriminate against Stamped Letter mailers. Docket No. ACR2014, Annual Compliance Determination, Mar. 27, 2015, at 68 (hereinafter “FY2014 ACD”). The Commission further noted that it previously determined that the Postal Service’s basis for establishing a separate Single-Piece Metered Letter rate was reasonable, and that the “same reasons justify its continuation.” *Id.*

Several years later in the R2019-1 docket, GCA raised the argument that the Metered Letter rate, and all Presort rates for which it serves as a benchmark, are

arbitrary and thereby inconsistent with Objective 8. Docket No. R2019-1, Comments of the Greeting Card Association, Oct. 30, 2018, at 10. The Commission found that GCA misapplied Objective 8 and concluded “that the Metered Letter rate, and presort rates for which it serves as the benchmark, are consistent with Objective 8.” Docket No. R2019-1, Order No. 5285, Order Approving Price Adjustments for First-Class Mail, Oct. 24, 2019, at 49 (hereinafter “Order No. 5285”).

Nearly seven years following the Commission’s initial rejection of GCA’s arguments, GCA filed the instant Complaint on January 30, 2020. The Complaint essentially mirrors its comments in the FY2013 ACR, FY2014 ACR, and R2019-1 dockets. GCA once again claims that the Metered Letter rate creates undue and unreasonable discrimination against Stamped Letter mailers in violation of Section 403(c), and that the rate differential between Stamped Letters and Metered Letters does not conform with 39 U.S.C. §§ 3622(b)(1), 3622(b)(5), and 3622(b)(8). Compl. at 2. Additionally, GCA repeats its claim that the Metered Letter Rate is arbitrary and so are the Presort Letter rates by virtue of being based on the Metered Letter rate. Compl. at 31-34. The Complaint also claims that the Postal Service cannot rely on 39 U.S.C. § 3622(b)(4) to cure discrimination in violation of Section 403(c). Compl. at 10.<sup>1</sup>

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<sup>1</sup> This claim should not be deemed a “new” argument as this argument is just a variant of GCA’s original arguments in its FY2014 ACR and R2019-1 comments.

## ARUGMENT

### **I. THE COMPLAINT FAILS TO STATE A CLAIM OF ANY VIOLATION OF APPLICABLE STATUTORY STANDARDS AND REGULATORY REQUIREMENTS THAT CAN FORM THE BASIS OF A COMPLAINT BECAUSE NONE APPLY**

Complaints that fail to state a violation of Section 101(d), 401(2), 403(c), 404a, or 601, or Chapter 36 or any regulation promulgated under any of the aforementioned provisions must be dismissed at the outset. 39 U.S.C. § 3662(a); *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 558 (2007); see also Docket No. C2015-2, Order No. 2585, Order Granting Motion to Dismiss, July 15, 2015, at 9-10 (hereinafter “Order No. 2585”). The Supreme Court has emphasized this standard by noting that courts should expose deficiencies “at the point of minimum expenditure of time and money by the parties and the court.” *Twombly*, 550 U.S. at 558 (internal citations and quotations omitted). The Commission has likewise recognized the importance of this standard by not hesitating to dismiss complaints that failed to properly allege a violation of applicable statutory standards or regulatory requirements. See, e.g., Docket No. C2019-1, Order No. 4924, Order Granting Motion to Dismiss, Dec. 12, 2018, at 2 (hereinafter “Order No. 4924”); Docket No. C2015-3, Order No. 2687, Order Dismissing Complaint, Aug. 26, 2015, at 21 (hereinafter “Order No. 2687”); Order No. 2585 at 2; Docket No. C2015-1, Order No. 2377, Order Granting Motion to Dismiss, Mar. 4, 2015, at 2; Docket No. C2014-1, Order No. 2136, Order Dismissing Complaint, July 28, 2014, at 2.

The Commission should not hesitate to dismiss GCA’s Complaint either. To state an actionable claim, GCA must plead, and ultimately show, that the Postal Service’s action or inaction violates applicable statutory standards or regulatory requirements. To do so here, GCA must show that the price differential between

Stamped and Metered Letters constitutes a violation of Section 101(d), 401(2), 403(c), 404a, or 601, or Chapter 36 or any regulation promulgated under any of the aforementioned provisions. As discussed in greater detail below, GCA's claims should be dismissed for the simple reason that GCA does not (and cannot) allege any facts that constitute a violation of the applicable statutory standards and regulatory requirements.

## **II. GCA'S COMPLAINT DOES NOT STATE A CLAIM UNDER SECTION 403(c)**

GCA's discrimination claim is based entirely on the fact that two different groups of customers—i.e., businesses and households—pay different rates for First-Class Mail letters. Compl. at 1-2. Specifically, businesses pay a lower Metered Letter rate as compared to households' Stamped Letter rate. GCA further alleges that the Postal Service was not justified in offering the differing rates for the following reasons: (1) the differential between the Metered Letter and Stamped Letter rates does not reflect a difference in the cost of processing and delivering the two products; (2) the Metered Letter rate has failed in its declared purpose; and (3) the differential does not conform with several objectives of Section 3622(b). *Id.* at 2.

To survive dismissal, GCA must plead sufficient facts to allege the following three elements:

First, it must establish that it has been offered less favorable rates or terms and conditions than one or more other mailers. Second, it must demonstrate that it is similarly situated to the other mailer or mailers who have been offered more favorable rates or terms and conditions of service. Third, it must demonstrate that there is no rational or legitimate basis for the Postal Service to deny it the more favorable rates or terms and conditions offered to others.



Docket No. C2009-1, Order No. 718, Order on Complaint, Apr. 20, 2011, at 28 (hereinafter “Order No. 718”); Order No. 4924 at 10 (dismissing the discrimination claim because “the Complainant has failed to show that the Postal Service has offered more favorable rates or terms and conditions to similarly situated individuals”).

The fundamental problem with GCA’s reliance on a discrimination theory is that it fails to plead any actionable discrimination within the meaning of 39 U.S.C. § 403(c). Specifically, GCA fails to plead the necessary factual allegations to establish the second and third elements of a *prima facie* case for discrimination. First, as shown below, GCA’s allegations that Stamped Letter mailers are similarly situated to Metered Letter mailers fall flat. Indeed, GCA itself concedes that there are “intrinsic differences” between the two groups. Second, GCA alleges that the rate differential between Stamped and Metered Letters is unreasonable, but as discussed below, none of GCA’s allegations as to why the rate differential is unreasonable withstand scrutiny.

**A. GCA’s Discrimination Claim Fails Because GCA Does Not Allege That The Mailers Are Similarly Situated**

GCA fails to allege any facts establishing that Stamped Letter mailers are similarly situated to Metered Letter users. The inquiry into whether mailers are similarly situated requires a “a comparison of the *relevant* characteristics of different mailers.” Order No. 718 at 28 (quoting Docket No. RM2003-5, Order No. 1391, Order Establishing Rules Applicable to Requests for Baseline and Functionally Equivalent Negotiated Service Agreements, Feb. 11, 2004, at 51) (emphasis in original). To show that Stamped Letter mailers are similarly situated to Metered Letter mailers, GCA rests solely on the fact that both types of mailers use the same service: Single-Piece First-

Class Mail Letters. Compl. at 11. This fact alone is insufficient to demonstrate that the two groups are similarly situated. See Order No. 718 at 49.

Moreover, the facts as pled in the Complaint demonstrate the implausibility of finding that Stamped Letter mailers are similarly situated to Metered Letter mailers. GCA concedes this point directly, stating that “[t]here are intrinsic differences between household and business users of Single-Piece letters, and these differences are inherent in the way each group uses the mails.” Compl. at 13. Stamped Letter mailers consist primarily of households, whereas Metered Letter mailers consist primarily of businesses. See Compl. at 11. Sending stamped mail involves simply attaching pre-purchased stamps, while using metered mail involves purchasing or renting a postage meter to purchase and print the exact postage needed. See Compl. at 1, 13-14.

Metered Letter mailers, unlike Stamped Letter mailers, generally have mail volumes that justify the costs of renting or purchasing meters. Compl. at 13-17. Based on these facts, GCA concludes “[m]eters are economically infeasible for household mailers.”

Compl. at 13. These differences between the mailers identified by GCA are material for purposes of Section 403(c). Thus, these statements prove fatal to GCA’s discrimination claim. *Ashcroft v. Iqbal*, 556 U.S. 662, 680 (2009) (noting that a Complaint that does not plausibly plead an element of the prima facie case should be dismissed); *cf.*

*Dimache v. Lake County Sheriff’s Office*, No. 5:10-cv-377, 2012 WL 1532561, at \*7 (M.D. Fla. Apr. 30, 2012) (“Because Plaintiff pleads facts which are clearly inconsistent with a finding of liability against [the defendant], the claims are dismissed with prejudice.”).

## **B. GCA's Allegations Do Not Support The Inference That The Rate Differential Is Unreasonable**

Charging two different groups of mailers different rates is not discriminatory under Section 403(c). See, e.g., *Egger v. USPS*, 436 F. Supp. 138, 142 (W.D. Va. 1977). The Commission and courts have found that it is “obvious” that the Postal Service may provide different rates or terms and conditions to different groups of mailers when the Postal Service has a reasonable justification for differentiating mailers. *Id.* To survive a motion to dismiss, GCA must plausibly allege facts that preclude the possibility that the Postal Service has a reasonable basis for assessing a lower rate to Metered Letter mailers as compared to Stamped Letter mailers. Order No. 718 at 28 (“Third, it must demonstrate that there is no rational or legitimate basis for the Postal Service to deny it the more favorable rates or terms and conditions offered to others.”). This is a steep hill to climb, and GCA’s attempt to do so falls short on all counts. First, the Commission has found that the Postal Service has a reasonable justification for differentiating the two groups of mailers. Second, the claim that the Stamped-Metered rate differential needs to be cost justified fails as a matter of law. Third, GCA’s factual allegations do not support the assertion that the Metered Letter rate has failed to meet its stated objective of increasing meter mail volume. Finally, despite GCA’s assertions to the contrary, the Commission has found that the rate differential conforms to the Section 3622 factors and objectives.

### **1. Commission Has Found That The Postal Service Has A Reasonable Justification For The Rate Differential Between Metered Letters and Stamped Letters**

The Postal Service has differentiated the Metered rate from the Stamped rate to encourage small businesses to adopt meters and slow the diversion of metered volume

from the mailstream. R2013-10 Notice at 19-20; Docket No. ACR2014, Reply Comments of the United States Postal Service, Feb. 18, 2015, at 5. Further, meter-based payment is more efficient than stamp-based payment because it eliminates the need for stamp production, distribution, and cancellation. Docket No. R2019-1, USPS Notice of Market-Dominant Price Change, Oct. 10, 2018, at 7. Meter-based payment also promotes consistent usage of the mail, thereby slowing electronic diversion. *Id.* Based on the foregoing, the Commission has concluded that the Postal Service has a reasonable basis for offering a separate, lower rate for Metered Letters as compared to Stamped Letters. See, e.g., Order No. 5285 at 67; FY2014 ACD at 68.

Moreover, the Commission continues to believe that the lower rate for Metered Letters is justified. See, e.g., Order No. 5285 at 39-41 (“Given the 109-day advance notice, the availability of the Forever Stamp, and the Postal Service’s pricing strategy to incentivize the entry of First-Class Mail pieces that are less costly to the Postal Service to process (such as Metered Letters), the 10 percent (5-cent) increase to Stamped Letters is not so precipitous.”), 43-44 (Applying the relatively smaller than average increases to mailpieces that are less costly for the Postal Service to collect, process, and deliver (such as Metered Letters and Presorted Letters/Cards) is consistent with a strategy of incentivizing the entry of volume that would reduce the costs of the Postal Service and increase contribution to institutional costs, thereby improving the Postal Service’s financial position.”).

Because GCA cannot establish that the Postal Service did not have a reasonable basis for differentiating rates, it cannot state a claim for discrimination as contemplated by Section 403(c).

## **2. Allegations Of Charging Different Rates To Different Groups Of Mailers That Are Not Cost Justified Cannot Save GCA's Complaint**

GCA alleges that the Metered Letter rate creates undue and unreasonable discrimination against Stamped Letter mailers because the rate is not set equal to the cost difference between Stamped and Metered letters. Compl. at 2. GCA does not reference any legal requirement stating that a rate differential must equate a difference in cost, because it cannot. Neither Congress nor the Commission has imposed a requirement that a price differential needs to be justified on a cost basis, outside of workshare discounts. And the Commission has declined to find that a worksharing relationship exists between Stamped and Metered Letters. FY2013 ACD at 71; FY2014 ACD at 68. The import from the Commission's determination is that the price differential need not equate to a difference in cost in order to be reasonable within the meaning of Section 403(c). Thus, GCA's unsupported legal conclusion cannot form any basis for challenging the differentiating rates.

## **3. Factual Allegations Relating To Meter Volumes Are Inconclusive About Whether The Metered Letter Rate Met Its Declared Purpose**

GCA alleges that the "discriminatory" Metered Letter rate is not justified because "it has failed in its declared purpose of increasing the use of meters and the volume of metered letters."<sup>2</sup> Compl. at 2. To demonstrate that the Metered Letter rate failed in its

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<sup>2</sup> While the Postal Service acknowledges that factual disputes are outside the scope of a Motion to Dismiss, the Postal Service would like to note that this factual allegation is contrary to the Postal Service's findings. We have found that the Metered Letter rate has succeeded in its declared purpose of increasing

declared purpose, GCA points to volumes provided by the Postal Service that reportedly show “that there has been essentially no gain, absolute or relative, in metered volume.” Compl. at 22. Contrary to GCA's assertions, its own Exhibit 7 shows that there have been gains in meter volume since 2014. Compl. at Exh. 7. Moreover, GCA fails to recognize that one would expect to find declining volumes year-over-year in a market characterized by declining demand. See Docket No. ACR2019, FY 2019 Annual Compliance Report, Dec. 27, 2019, at 7. Further, GCA has not pled factual allegations stating that metered volumes would not have declined faster absent the separate, lower Metered Letter rate.

Additionally, the Commission reviews the Metered Letter rate in the annual compliance review to determine if the rate complies with chapter 36 of Title 39. 39 U.S.C. § 3653(b)(1). The Commission has reviewed the Metered Letter rate each year in ACR dockets since the FY2014 ACR docket and has not even suggested that the rate does not comply with the applicable statutory standards. GCA pleads no other factual allegations that support its summary conclusion that Metered Letter rate failed to meet its stated objective. The Commission should dismiss the Complaint because GCA has failed to allege facts plausibly showing that it is unreasonable to differentiate the rates for Stamped and Metered Letters.

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the use of meters and volume of meters. Additionally, we have also found that Stamped Letters and Metered Letter have different price elasticities thus further justifying the rate differential.

#### **4. Complaint Fails To Establish That The Differential Does Not Conform With Section 3622 Factors And Objectives**

Lastly, GCA alleges that the Metered Letter rate is not justified because it fails to conform to 39 U.S.C. §§ 3622(b)(1), (b)(4), (b)(5), and (b)(8). As discussed below, each of these allegations fails as a matter of law.

For Section 3622(b)(1), GCA claims that the rate differential between Metered and Stamped Letters “in relation to the cost difference and its failure to attract new Metered volume” cannot promote the objectives of Section 3622(b)(1). Compl. at 31. Contrary to GCA’s allegations, the Commission has found that the Metered Letter rate is consistent with “maximiz[ing] incentives to reduce costs and increase[ing] efficiency,” as provided by Objective 1. 39 U.S.C. § 3622(b)(1); Order No. 5285 at 36-37. The Commission also found that the rate promotes the goal of Objective 1 by encouraging the entry of Metered Letter pieces that are less costly for the Postal Service to collect, process, and deliver, and encourages additional volumes from mailers that are likely to have higher volumes. See Order No. 5285 at 36-37.

For Section 3622(b)(4), GCA alleges that a rate that “fall[s] [a]foul of sec. 403(c)” “cannot be deemed an appropriate use of pricing flexibility.” Compl. at 30-31. The Postal Service does not necessarily dispute the bootstrapped, theoretical argument that an otherwise discriminatory rate in violation of Section 403(c) cannot be redeemed by the Postal Service’s pricing flexibility, if that were the case. However, such an argument does not apply here. As discussed above, GCA has failed to state a plausible claim that

the Metered Letter rate violates Section 403(c); as a result, this allegation fails as well, given its dependency on the unsubstantiated discrimination claim.<sup>3</sup>

Additionally, just as Objective 4 may not cure a violation of Section 403(c), Objective 4 cannot be ignored either. If the PRC were to eliminate the separate Metered Letter rate, the Stamped Letter rate would replace the Metered Letter rate as the benchmark for Presort rate, resulting in nearly all of the Postal Service's First-Class Mail Letters rates moving in lockstep with the Stamp rate, thus eliminating any pricing flexibility for letters. This would render Objective 4 void, a result Congress could not have intended when it provided the Postal Service with pricing flexibility through that Objective. See generally *Flagstaff Med. Ctr., Inc. v. Sullivan*, 962 F.2d 879, 889 (9th Cir. 1992) (noting where court's remedies are consistent with Congress's intent then they comply with the Act in question); *Santos v. Am. Cruise Ferries, Inc.*, 100 F. Supp. 3d 96, 109 (D. PR. 2015) (noting that a court should closely look to legislative enactments when conferring a remedy to avoid "absurd results").

For Section 3622(b)(5), GCA alleges that the Metered Letter rate sacrifices revenue by "needlessly reducing revenue from Single-Piece letters, and secondly by depressing the Presort rates calculated from the Metered Letter price." Compl. at 27. The Commission has disagreed. See Docket No. R2020-1, Order No. 5373, Order Approving Price Adjustments and Related Mail Classification Changes For First-Class Mail, Dec. 20, 2019, at 64-65 (issuing favorable review of the rates); see also Order No. 5285 at 67 (issuing favorable review of the rates). This is another bootstrapping argument by GCA which ignores any effects that the lower meter rate has over the

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<sup>3</sup> Further, the Commission has found that the Metered Letter rate conforms to Objective 4. Order No. 5285 at 41-42.



long-term in preserving single-piece letter volume, as noted above.<sup>4</sup> Indeed, the Commission has found that the lower rate for Metered Letters is likely to stimulate volume, rather than depress volume. Order No. 5285 at 36-37. These allegations can be best described as nothing more than GCA expressing its displeasure with how the Postal Service is exercising its pricing flexibility within First-Class Mail. In sum, the Postal Service's exercise of its pricing flexibility as applied to the Metered Letter rate within First-Class Mail is appropriate given that the rate does not sacrifice revenue as alleged by GCA.

For Section 3622(b)(8), GCA alleges that the Metered Letter rate is an unduly and unreasonably discriminatory rate and is therefore inconsistent with establishing and maintaining a just and reasonable schedule for rates and classifications as provided by Objective 8. Compl. at 30. The Commission has found that the Metered Letter rate is "just and reasonable" as contemplated by Objective 8. Order No. 5285 at 49. Specifically, the Commission concluded that the Metered Letter rate is neither excessive to mailers nor threatens the financial integrity of the Postal Service. *Id.* Rather, the rate helps the Postal Service maintain its revenue in a market characterized by declining demand by encouraging high-volume mailers to continue using First-Class Mail. *See id.* at 43-44.

In sum, the Metered Letter rate conforms to the aforementioned Objectives.

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<sup>4</sup> As the Postal Service has pointed out in other contexts, individual pricing decisions do play a role in actual revenue collected, most notably where applying price cap space to products with steeper volume declines wastes the price cap space and results in lower revenue than applying the price cap space to products with more stable volumes. But GCA has not made any allegations in this vein.

### **III. THE COMPLAINT FAILS TO ESTABLISH THAT THE METERED LETTER RATE AND PRESORT RATES ARE ARBITRARY**

Finally, GCA claims that the Metered Letter and Presort rates are arbitrary, under a theory that, because the Metered-Stamped differential is not dictated by costs, the Presort rates somehow do not reflect costs avoided either. Compl. at 31-34. Accordingly, GCA recommends that the Postal Service calculate worksharing rates “from a *cost* benchmark rather than from a tariffed rate bearing no apparent relation to costs.” *Id.* at 33 (emphasis in original). GCA raised this exact argument in Docket R2019-1, and the Commission disposed of it there. Order No. 5285 at 49. In doing so, the Commission made it clear that GCA was essentially seeking reconsideration of the Commission’s establishment of Metered Letters as the appropriate benchmark for Presort rates. *Id.* The Commission noted that the appropriate process for seeking such reconsideration is a petition pursuant to 39 C.F.R. § 3050.11, which GCA did not pursue.

To state a claim that a rate is arbitrary, GCA must plead plausible factual allegations that demonstrate the rate was not based on a reasonable principle. See *Minneapolis & St. Louis R.R. Co. v. State of Minnesota*, 22 S. Ct. 900, 905 (1902). Here, GCA is unable to plead any factual allegations that preclude the possibility that the Metered Letter and Presort Rates are reasonable. Further, as discussed in greater detail above, the Postal Service has a reasonable justification for the Metered Letter rate; therefore, the Postal Service also has a reasonable justification for the Presort rates, by virtue of their being based on the Metered Letter rate. See discussion *supra* Section II.B.1.

#### **IV. THE PRC HAS ALREADY COMPREHENSIVELY REVIEWED AND ADDRESSED GCA'S CLAIMS ON MULTIPLE OCCASIONS**

Overall, the Complaint is an attempt to revive, in a new proceeding, arguments that the Commission has previously comprehensively addressed and rejected in the FY2014 ACR and R2019-1 dockets. *See supra* Factual Background Section. The Complaint does so without referring the Commission to any changed circumstances that would call the Commission's prior conclusions into question. This attempt must fail.

#### **V. DISMISSAL WITH PREJUDICE IS PROPER**

The Commission should dismiss GCA's Complaint with prejudice and without leave to amend. Over a seven-year span, the Commission has repeatedly reviewed and addressed the claims that GCA has raised in the instant Complaint. As explained above, the deficiencies in GCA's claims are fundamental legal ones, and there is no reason to believe that GCA can remedy them by amending its Complaint. *See* Order No. 2687 at 21. "[A]mendment is not warranted if it would . . . reward undue or intended delay." *California ex rel. Wible v. Warner Chilcott PLC*, No. 11-cv-11143, 2014 WL 1338285 (D. Mass. Apr. 1, 2014). As such, the Complaint should be dismissed with prejudice and without leave to amend.<sup>5</sup> *See Vance v. Mabus*, 956 F. Supp. 2d 83, 92 (D.D.C. 2013) (noting that a complaint should be dismissed with prejudice when no additional facts or allegations could possibly cure the deficiencies in the complaint (citing *Firestone v. Firestone*, 76 F.3d 1205, 1209 (D.C. Cir. 1996))).

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<sup>5</sup> The Postal Service also observes that the Commission is presently engaged in a comprehensive review of the market-dominant ratemaking system in Docket RM2017-3, and it would be improper to allow one party in that proceeding to separate and elevate its chosen issue into a separate, standalone docket.

## **CONCLUSION**

For the foregoing reasons, the Postal Service respectfully requests the Commission grant its motion to dismiss GCA's Complaint for failure to state a claim upon which relief can be granted, with prejudice and without leave to amend.

## **CERTIFICATE OF SERVICE**

I, Amanda Hamilton, hereby certify that on February 19, 2020, I caused a true and correct copy of USPS's Motion to Dismiss the Complaint of the Greeting Card Association to be served on the following parties via the Postal Regulatory Commission's efilings system and electronic mail as indicated:

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